THE SOCIALIZATION OF ECONOMIC RISK AND THE REDISTRIBUTION OF LIABILITIES[1]

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Abstract

The development of industry 4.0, described as the fourth industrial revolution driven by the globalization of trade, can be analyzed as a major factor in the transformation of labor law and employment, as important as was the expansion of manufacturing industry impelled by capitalism. The recognition of objective legal liability obeying specific mechanisms of allocation and compensation had the effect, through the socialization of law, of supporting the changes in 19th and early-20th-century society. Today, the spread of globalization based on trade liberalization has prompted states to include — and bear — economic risk in their policies, illustrating the shift from the social functions to the economic purposes of labor law.

Keywords: Liability, Risk, Corporate Social Responsibility, Contract of Employment, Relationship of Subordination, Collaborative Platforms, Economic Dependence, Work Collective, Workers, Social Rights, Rights Relating to the Person.

Liability is a concept that provides structure to the law and has been described as an "institution" in the writings of eminent civil-law scholars (Jourdain, 1998; Viney, 2008). It is one of the fundamental concepts of legal life: to be liable is, firstly, in the etymological sense, to remedy the damage one has caused. This description of liability, according to Emmanuel Lévy (1939, p. 7), is the counterparty to the freedom recognized as a subject in law: *"We become liable when we exercise our rights"*. It reveals the intricate relationship between the aptitude to exert one's rights and to be subject to obligations, criteria which characterize a legal personality.

Labor, or more precisely the transformation of the forms of organization of labor linked to large-scale industry that was becoming widespread in the 19th century following the expansion of mechanization[3], contributed to the redefinition of a part of civil liability law by opening the way to collective compensation mechanisms based on a liability that, from then on, would be without fault, based on the idea of "risk"[4] in the context of employment. The *"general risks of industry"* (Boissard, 1910, p. 27) are thus fully integrated into the liability framework and contribute to the transformation of its nature and

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[2] https://isst.pantheonsorbonne.fr/

[3] "*That is the use of sets of tools in which manual labor has been replaced by air, steam or electrical power*", Romieu opinion in Cames judgment (Council of State 21 June 1895, in Sirey collection 1897.3.33).

[4] "Objective" liability, Council of State 21 June 1895 (Cames judgment) in Sirey collection 1897.3.33, Romieu opinion, Hauriou note and *Cour de cassation* 16 June 1896, (Teffaine judgment) Dalloz 1897, p. 432 ff., Saleilles note; Law of 9 April 1898 on liabilities in workplace accidents in which workers are victims.

objective[5]. The indemnification of damages (reparation) supplants the normative function (to ensure sanction of the faults that caused the damage; Viney, 2008).

This - classical - analysis of the development of liability law allows us to examine the development of the functions attributed to it. The very significant debates that divided some legal scholars at the end of the 19th century and the start of the 20th century nevertheless agree on the link between the economic context (*"the pressure of the necessities of industrial life"*, Josserand, 1897, p. 9) and the development of the law towards an *"economic concept of risk"* (Veniamin, 1930, p. 415). The obligation of reparation, based on liability for the actions of others[6], is the counterparty of the benefits gained from the activity which generated them, summarized by the existence of a *"law of connectivity between profit and risk"* (Planiol, 1909, p. 300).

While the slow transformation of civil-liability law caused by the development of large-scale industry opened the way to the "socialization" of risk (caused by workplace accidents) and of the law, it also facilitated the increased autonomy of labor law, separate from the civil-law matrix based on the dogma of the equality of the parties to a contract. The fourth industrial revolution, and the place it occupies in the context of the globalization of economic trade and digitalization, has led to the emergence of new legal figures, of whom the most iconic today are workers on digital platforms. New forms of dependency are being created that are more insidious because they are clothed in the misrepresentation of the autonomy and freedom generated by information and communication technologies.

I. FROM THE SOCIALIZATION OF RISK CAUSED BY THE DEVELOPMENT OF LARGE-SCALE INDUSTRY TO THE FOURTH INDUSTRAL REVOLUTION

The individualist spirit of the Civil Code of 1804 was followed by what legal scholars call the "socialization of law": *"The law is not a large construct similar to the Classical theatre which only features general abstractions"* (Demogue, 1911, p. 169; see also Veniamin, 1930, p. 401 ff.; Durand, 1942). Liability does not disappear, but changes in nature: *"It becomes collective"* (Savatier, 1931). The way the law worked was significantly updated by the birth of "socialized" risks in the legal world, which responded to a particular legal regime. The recognition of objective liability that obeyed specific mechanisms of imputation and reparation allowed the law to evolve alongside the social and economic transformations of society and to mirror more general developments in the law and the State. We are witnessing a veritable paradigm shift with the invention of the theory of risk-based liability. Universal law, based on the "natural order" of the world and the concept of causality, that we find formalized in Aristotle's *Physis*[7], is being succeeded by laws of society based on the concept of finality (Ripert, 1918). The individualist and liberal Napoleonic Code is being succeeded by so-called "social" legislation (Boulanger, 1950, p. 73). The law can get involved in the most minor upsets in social life, replacing a

[5] "*Let us recognise that it is a legal obligation, an obligation based on the concept of risks and justified by this concept, that is so simple and equitable, that he who manages a business must bear the risks arising from it"*, Saleilles, op. cit., p. 439.

[6] Article 1384, paragraph 1 of the Civil Code which, in 2016, became Article 1242 following the ratification of Order n° 2016-131 of 10 February 2016 reforming contract law, the general regime and proof of liability.

[7] *Nomoi*, defined by humans, are derived from *Physis*, the natural law of things and humans. It is on this notion that theoreticians of natural law would rely, from St Thomas Aquinas to Montesquieu, right up to influencing one of the early drafts of the Civil Code which bore a preliminary title taken from a passage in Cicero's *Republic* which states the principle that *"a universal, immutable law exists that is the source of all positive laws; it is only natural reason in itself that governs all the peoples of the earth"* (1st paragraph). *"Individual and intelligent beings may have the laws they have made; but they also have those that they did not make…Before there were made laws, there were relationships of justice"* (Montesquieu, *The Spirit of Laws*, Book I, Chapter 1).

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relationship with nature with a *"purely social relationship"* (Ewald, 1986, p. 541). The "workers' laws" that were first codified in the Labor and Providence Code in the early 20th century, can be fully included in this legal order. It thus seems indispensable to replace the regulation of a workshop *"worked by a single owner"* with *"special legislation on the conditions of validity of an employment contract"* (Jay, 1904). Employment relationships must be organized in the context of the development of large-scale industry.

The use of the concept of risk in the legal regime of civil liability shows the extent to which this legal category has become systemized within the contextual elements linked to economic developments. Subsequently, other risks associated with industrial activity, or simply with life in society, have emerged, leading to the creation of special regimes of liability that allow, for example, the guaranteed reparation of damages caused by traffic accidents and terrorist acts or the requesting of reparation for environmental damage (Trébulle, 2016; Blin-Franchomme, 2017; Boutonnet, 2017)[8].

Related to the digitalization of the economy, the expansion of globalization - an argument which returns like a refrain in the texts explaining the reasons for new proposed laws - and its conception against the background of the progressive liberalization of economic transactions, has led States to integrate "economic risk" into their public policies, thus confirming the passing of "social functions" (Duguit, 1912, p. 19 ff.) in favor of the economic finalities of labor law[9]. This socialization of economic risk has been demonstrated by the adoption in the last decade of a series of reforms (among others) aimed at making more flexible the conditions for breaking employment contracts while transferring legal control to judges, rather than protecting, under the aegis of the law, the weaker party to the employment contract (the employee), so as to re-establish a sort of equality in the employment relationship[10]. Should this be seen as an overall transfer of risks (Lokiec, 2015, p. 114 s.) within a system of labor law that has become an adjustable variable, and a manifestation of what Gérard and Antoine Lyon-Caen (1978, p. 620) called, from the end of the 1970s onwards, "triumphant economism"?

II. ECONOMICALLY DEPENDENT SELF-EMPLOYED WORKERS: THE EXAMPLE OF SERVICE PROVIDERS ON COLLABORATIVE PLATFORMS

Some recent developments that can be observed within and outside the framework of salaried employment deserve a mention as they create new forms of economic dependence at the same time as constituting a source of change to labor law. The inclusion in the Labor Code of regulations governing the working conditions on collaborative platforms and the application of specific social rights to self-employed workers providing their services via these platforms, reverses a century of legislative, jurisprudential and doctrinal developments of labor law. For, indeed, it was the "invention" of

[8] Article 1248 and following articles of the Labor Code.

[9] This also stresses the importance of the economic analysis of law. For an illustration of the reception of the theory by the legal establishment, see, for example, Bruno Deffains and Myriam Doriat-Duban (2010).

[10] Creation of the individual *"rupture conventionnelle"* (a mutual agreement for ending of a contract), outside the procedures applicable to redundancy and dismissal (Labor Code Article L1237-11 and following); Law of 25 June 2008 modernizing the labor market), then collective because it was determined by a collective agreement (Labor Code Article L1237-19 and following; Order of 22 September 2017 concerning the predictability and securing of employment relationships); insertion, in the Labor Code of standard redundancy letters (Articles L1232-6, paragraph 3, L1233-16, paragraph 3, and L1233-42, paragraph 3); possibility for the employer to give the reasons for redundancy in a letter after notifying the employee (Article L1235-2); establishment of a sliding scale to be imposed on judges when calculating compensation for redundancy without proper and serious cause (Article L1235-3); appraisal of the economic cause of redundancy decided in a business that belongs to a national group and no longer international groups, except in cases of fraud (Article L1233-3; Law of 8 August 2016 concerning employment, modernization of social dialogue and securing career paths).

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employment contracts that allowed, by detaching them from the matrix of the Civil Code, to bring together "workers" in heterogenous working conditions under the same legal status, that of employees. In doing this, the law made possible the uniformization of dependence figures[11] by referring to a flexible legal interpretation of the relationship of subordination *("lien de subordination juridique"*)[12] which allowed the recognition as employees of workers who, however, have real autonomy in the organization of their work[13].

Work done via collaborative platforms does not exhaust the multiple forms of *"economically dependent work"* (Antonmattei and Sciberras, 2008) - defined by the European Commission in its 2006 Green Book as work that "[…] *covers situations that are not covered by the well-established concept of salaried work, nor that of self-employment. This category of workers does not have an employment contract. They cannot fall under the coverage of employment legislation because they occupy a "gray area" between employment law and commercial law. Despite being formally "self-employed", they remain economically dependent on a single principal or client/employer for the source of their incomes*" (Commission des communautés européennes, 2006). Nevertheless, it recognized forms of work organization that, while performed under the status of self-employed contractors, borrowed also from the criteria of salaried employment. Does this syncretism herald the creation of a new legal status, the extension of social rights to self-employed contractors, or does it presage a more general development in employment law?

The business objective of the operators of collaborative platforms – as they are described in Article L.111-7 of the Consumer Code – is to provide an electronic means of contact between clients and "self-employed" workers, who are tied to the platform by commercial contracts, for the sale of goods, the provision of services on the exchange or sharing of goods or services[14]. Uber defines itself in its standard contract for the provision of services as a *"provider of technological services"*[15], while Deliveroo *"ensures the contact between its clients, its portfolio of partner restaurants and self-employed delivery providers by offering the provision of a delivery service for meals to homes or workplaces"*[16]. The economic risk, in the sense of the loss of revenue linked to a decline in activity[17], is borne, in principle, by the service provider who also receives the benefits derived from it and whose activity is characterized by autonomy. However, some platforms, such as Deliveroo, have set up mechanisms that generate competition between workers while at the same time organizing a sort of control of their activity from the moment that it is regulated by the platform which allocates delivery districts to a limited number of workers. Not all the workers can choose their working hours because they are determined by registration slots that are pre-set by the platform (*"shifts"* starting at 11am, 3pm and 5pm), which allow workers to build their weekly working plans on each Monday for the following week[18]. Yet, the options for

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[11] The relationship of dependence - be it economic, technical or legal -, constitutes the main criterion used to categorise, in a legal sense, the employment contract (Cuche, 1913).

[12] *"Given that the legal status of a worker with regard to the person for whom he works cannot be determined by weakness or economic dependence of the worker but only from the contract between the parties; the status of the emplyee necessarily implies the existence of a legal link of subordination between the worker and the person that employs him"* Civil Chamber of the *Cour de Cassation*, 6 July 1931, DPO 1931, 1, 121 ; Civil Chamber of the *Cour de Cassation*, 22 June 1932 (3 judgments) and 1 August 1932 (5 judgments), D.P. 193, 1, 45, note PIC.

[13] *"What is still called subordination is now only, in a general sense in social law, a group of circumstances, which appear to be very diverse, that allow it to be confirmed that the worker is one of the human components that occupies a place in a business of which he is not the organiser: he is the person who belongs to a business"* (Groutel, 1978, p. 57-58).

[14] Decree n° 2017-774 of 4 May 2017 concerning the social responsability of platforms that create electronic relationships, French Official Journal of 6 May 2017. Article L111-7, I, 2° of the Consumer Code.

[15] Version dated 1 February 2016.

[16] Standard contract for service providers, *Généralités, A.*

[17] The concept deserves deeper study, especially with regard to economic analyses, in particular to distinguish it from capitalist risk. For a first approach to this, see Luc Marco (2012).

[18] 7.50am/9am; then every hour between 9am and 11.30am; 11.30am/1pm then every hour from 1pm to 2am.

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choosing the shift - i.e., to choose their working hours and districts - depends on statistics generated by the platform with regard to the individual worker's activity. Depending on his or her activity level[19], the number of late cancellations[20] or the participation at peak hours[21], the platform will automatically place the worker on one of the three shifts. If the statistics are good, the worker is offered the first shift, starting at 11am when few other workers will be working; whereas if the statistics are poor, the worker will be relegated to the 5pm shift and only given access to the hours and districts that have not already been booked by other workers. In addition, while the worker is connected to the Deliveroo app, he or she can be geolocated by both Deliveroo and the customer who can track the delivery and the route taken. Any worker who turns off the app too often, according to Deliveroo, will not only see his or her statistics get worse but will receive a reprimand from Deliveroo which can threaten to end his or her contract. Originally, Deliveroo delivery riders were paid a fixed price per delivery (€5.75), but since the summer of 2018 they have been paid on a variable tariff (between €4.80 and €7.50 per delivery) which takes account of the distance travelled. At the same time, the delivery districts were enlarged. In theory, riders can refuse deliveries, and the number of refusals that day will appear on the app.

Setting aside the fact that such mechanisms bear a strong resemblance to disguised economic sanctions which create new forms of allegiance between workers (Supiot, 2000, 2018), they also contribute to the creation of a work structure that is organized so as to give the service providers no decision-making power whatsoever – a criterion which prevents it from being described as (among others) self-employment, and thus could be seen to change the service-provider contract into an employment contract (Jeammaud, 2017)[22].

In consequence, whether it be by promoting the employee's autonomy whose personal initiative has become a determining criterion for the law[23], or by regulating in the Labor Code[24], forms of activity which would previously have been regulated by commercial law, employment law seems to have undergone a metamorphosis which raises the question of whether it has pushed *"the bases of a new social model into the digital era"*[25].

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[19] "Percentage of delivery shifts to which you are connected".

[20] "Percentage of delivery shifts cancelled at less than 24 hours' notice".

[21] "Number of connections during peak delivery shifts (8pm to 10pm Friday, Saturday & Sunday)".

[22] Several internal complaints were made in different EU member states, including France. The *Cour de cassation* decided, in a recent judgment on 28 November 2018 (published as n° 17-20.079), that the existence of the power of direction and control in the execution of the delivery constituted a link of subordination and the existance of an employment contract, established from the moment that a company (Take Eat Easy) uses a web platform and an app to put its partner restaurants, the clients placing orders for meals via the platform and bicycle delivery riders delivering those meals as self-employed service providers using an app containing a geolocation system allowing the company to track the delivery rider in real time and the calculation of the total number of kilometres travelled by the delivery rider and that, in addition, the company had the power to sanction the delivery rider. Also in the Social Chamber of the *Cour de cassation*, on 4 March 2020, n° 19-13316, published, concerning the "fictitious" status of self-employed service provider of an Uber driver.

[23] The example of the right to continuous professional training can be cited: the Law of 4 May 2004 recognises this initiative as the directive principle that affects the applicable legal regime in the field of the obligations on the employer (Labor Code L6312-1). Also, in the judgment of the Social Chamber of the *Cour de cassation*, dated 16 January 2008, published in the Official Bulletin as n° 07-10095: *"And, given that it has been noted that the training activities linked to the "Alliance" project ha not been requested by the employees, they had concluded that, whatever their nature, these hours of training could not be debited from the training savings accounts, the Court of Appeal which has ruled that those debits made constituted a manifestly illicit offencee, was correct in law; and that the means was unfounded"*. See also on this subject Maggi-Germain, 1999 ; Maggi-Germain, 2014 and Gautié *et al.*, 2015.

[24] Article L7341-1 and following of the Labor Code. *"This section I applicable to self-employed workers who have recourse, in the performance of their work, to one or more electronic contact platforms as defined in Article 242 bis of the General Taxation Code*" (Article L7341-1 was introduced by the Law of 8 August 2016 concerning employment, the modernisation of social dialogue and the securing of career paths).

[25] Title III *"Securing career pathq and constructing the bases of a new social model in the digital era"* of the Law n° 2016-1088 concerning employment, the modernisation of social dialogue and the securing of career paths.

III. THE NEW FIGURES OF DEPENDENCE, "*BASES OF A NEW SOCIAL MODEL IN THE DIGITAL ERA"* ?

The conditions for exercising the activity generated by these platforms were set out in Article 60 of the Law of 8 August 2016 cited above, in its second chapter, entitled "*Adapting employment law to the digital era"*. These provisions were added to the Labor Code as Articles L. 7341-1 to L. 7342-6, in the seventh part concerning "Specific dispositions that apply to particular professions and activities"[26]. Thus the Law extends the field of application of the Labor Code to workers technically designated as self-employed under Article L. 7341-1.

In the 21st century, as in the 19th, the law is accompanying the expansion of new ways of organizing work - mechanization on the one hand and digitalization on the other - embedded in new economic models. But dependence has changed its appearance. The dematerialization of collaborative platforms (are we really dealing with enterprises here?[27]) makes new forms of control possible that may be less visible, but remain just as real. Furthermore, the disintegration of the workplace not only makes it more difficult to create a work cooperative (would it make any sense from a legal point of view?), but also encourages the deconstruction of collective protections that aim to be applied in the framework of the business - here we could mention in particular the question of protecting the health of workers.

This dematerialization also has effects on the liability regime established by Article L. 7342-1 of the Labor Code *"when the platform determines the characteristics of the delivery of the service provided or the goods sold and fixes its price, it has, with regard to the workers concerned, a* ***social responsibility*** *that applies in the conditions described in this chapter"*. The established responsibility regime does not ensue from the relationship of salaried employment and the existence of a link of legal subordination, but rather the determination by the platform of the economic conditions under which the work is organized. This, so-called "social" responsibility is characterized by the replacement of the self-employed worker by the platform regarding the payment of some subscriptions (e.g. insurance premiums covering the risk of workplace accidents, Labor Code Article L. 7342-2) or social-security contributions (e.g. those to finance professional training, Article L. 7342-3) as soon as the worker reaches a fixed turnover threshold (Article L. 7342-4). Furthermore, some freedoms and social rights are recognized for these workers: "the right to professional training" (Article L. 7342-3, paragraph 1); the right to validation of prior experience (*VAE – Validation des acquis de l'expérience* Article L. 7342-3, paragraph 2) - the support costs being assumed by the platform (Article D7342-3, paragraph 1 and Articles R6423-2 and 3) which pay an allowance to compensate for the loss or revenue caused (Article D7342-3, paragraph 2); the right to go on strike[28]which cannot, except when abused, *"neither engage their contractual liability, nor constitute a reason for the ending of their relationships with the platforms, nor justify measures that penalize them in the exercise of their activity"*(Article L. 7342-5); and the right to join or set up a trade union (Article L. 7342-6). The reference to the concept of "social" responsibility allows the delimitation of the field of legal liability of the platforms, rather than changing their nature, while at the same time

[26] e.g. journalists, people who work in entertainment, advertising and fashion (Book 1), concierges and those employed in residential apartment buildings and domestic personal care workers (Book 2), sales representatives, branch managers, salaried entrepreneurs associated with cooperatives and workers who use electronic contact platforms (Book 3).

[27] From a legal point of view, Article 242 *bis* of the General Taxation Code qualifies them as businesses, whereas the Labor Code only refers to the concept of a "platform".

[28] Which is not qualified as such, as Article L7342-5 refers to *"movements of concerted refusal to provide their services organised by the workers"* of the platforms *"with the aim of defending their professional grievances"*. The classical definition of a strike is defined in jurisprudence as the *"collective and concerted ending of work motivated by professional grievances"* (for example: Social Chamber of the *Cour de cassation*, 16 May 1973, published as n° 72-40541).

placing the "business risk" (Maggi-Germain, 2013b) on the platforms' workers[29].

Concomitantly with the emergence of new figures of economic dependence, it is interesting to note that employment law mobilizes, from now on, beyond the figure of the worker or salaried employee, the "person" (Maggi-Germain, 2004, 2013a, 2017). Should this be seen as a form of emancipation or rather the resurgence of links of personal responsibility which permits the transfer of liability?

The slipping of the scope of social law from the salaried employee or even the worker towards the person is illustrated by recent creations of the personal training account (*compte personnel de formation)* and the personal activity account (*compte personnel d'activité*). Codified by the Law of 8 August 2016 in the fifth part of the Labor Code dedicated to employment, the personal activity account aims, as a perpetuation of the personal training account, to bring together the social rights which, although acquired under different legal statutes, can be exercised regardless of job status. It is about guaranteeing continuity in the exercise of social rights[30]. To permit this, the acquired rights are attached to the person, which also ensures continuity in their implementation. These social rights - for example, the right to receive training - which at present are derived from the personal training account, the professional health and safety account and the civic engagement account[31], can be different in nature and acquired under different statuses (Maggi-Germain, 2016, 2017). If their use relies, in theory, on the person's initiative, the purposes laid down by the law concern as much the conditions of their acquisition as their use, thus linking them more to the provision about flexi-security that to a mechanism of empowerment, which serves as a vehicle for the emancipation of individuals. If it is indeed the owner of the personal activity account that decides to make use of their rights, this must be under the conditions defined by the legislation concerning a system whose purpose is, above all, to overcome obstacles to social mobility by reinforcing the autonomy of this "owner"[32]. If *"the advent of the society of individuals is the recognition of the power human beings have over the organization of their society"* (Dumont, 1956, p. 37), is not the society of individuals heralding the socialization of economic risk, which translates into the setting up of competition between workers supported by *"the desire of the legislators to go past the horizon of employment law"* (Willmann, 2016, p. 819) ? The personal activity account and the personal training account seem, through the "new" social rights attached to the individual who guarantees their implementation, to be participating in an individualization of the management of social risks and to forcing workers to contribute to the management of economic risks. This specific question deserves to

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[29] The existence of this risk, noted by the *Cour de cassation*, permits it to reserve itself the right to check the validity of the clauses in the employment contract that specify a variation in remuneration which could have the effect of making the employee bear the business risk. In the framework of its social responsibility towards its workers, Law n° 2019-1428 of 24 December 2019 on the orientation of mobilities provides that the platform can establish a *"charter defining the conditions and processes for implementing its social liability, defining its rights and obligations and those of its workers with whom it has a relatonship." "These rules guarantee the non-exclusive nature of the relationship between the workers and the platform and the freedom of the workers to use the platform and to connect to it or disconnect from it, without having activity time slots imposed on them."* and thus, among others, that *"the processes aim to allow the workers to obtain a fair price for their provision of services."*These charters, when they exist, must be submitted for approval by the administrative authority. They cannot be characterised by the existance of a link of legal subordination between the platform and the workers (Labor Code Article L7342-9).

[30] The concept of "social rights" in itself deserves to be researched from the point of view of the law; if the particularity of these rights is to express an ideal form of respect for human beings for the purposes of society (Michaélidès-Nouaros, 1966. p. 235), then this means they can benefit from a specific legal regime characterised, for example, by the mutualization and fungibility of their financing. Social rights were launched in the programme of the National Resistance Council of 15 March 1944 and emerged into the French legal order at the end of the Second World War in the Preamble to the 1946 Constitution of the Fourth Republic which proclaims as "particularly necessary in our time" the following political, economic and social principles: equality of men and women, the duty to work, the right to employment, the right to join a trade union, the right to strike, the right to access professional training and culture and the right to obtain from society the means required for an acceptable standard of living. These principles remain in legal force today. But here we are dealing with programmatic rights, that aim to give direction to political decisions without creating subjective rights that individuals could claim.

[31] Labor Code Article L5151-5.

[32] *"The personal activity account's objectives are, through the use of the rights contained in it, to strengthen the autonomy and freedom of action of its holder and to secure his or her career path by reducing obstacles to mobility."* (Labor Code Article L. 5151-1, paragraph 1).

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be asked in terms of the work done in management sciences around "agile" businesses, that can adapt more easily, are more flexible, and who value free individuals (Barrand, 2010, p. 19), or of the pronouncements about "talents", according to which *"the individual who has chosen his/her own career path* ("l'acteur-trajectoire") *must pursue it through erratic situations, trend reversals, critical incidents and cuts in resources"* (Bourion *et al.*, 2011, p. 2).

CONCLUSION

By making references to the "socialization of the law", late-19th-century and early-20th-century legal scholars were attempting to take account of the development that had led to replace an individual obligation with *"a collective obligation that supports a social group"* (Durand, 1942, p. 83). Breaking with the individualist tradition of subjective rights, the socialization of the law also presumes that the state abandons its role of guarantor[33] to become a welfare state. The developments described above only constitute part of general transformations that are more to do with the redistribution of liabilities, in our opinion, than with the taking of more responsibility (Bargain *et al.*, 2014). The "socialization of economic risk"[34] at first sight certainly seems to encourage salaried employees, workers and individuals by opening up to them, for example, "rights to training" whose declared objective is to secure their career paths by individualizing them (Gautié *et al.*, 2015), but it also contributes to rethinking the function of the company as embedded in public employment policies (Maggi-Germain, 2014) by the extension of its obligations and liability towards its salaried employees[35]. These developments also transform the welfare state into a regulator state, subsumed into "public action" determined by its capacity to *"create institutional systems that are adapted to the reality of public problems"* (Duran, 2009, p. 328). The reduction in the number of figures - transnational businesses, NGOs and international institutions - on the international stage (Delmas-Marty, 2015, p. 395) also creates the advent of a "*post-national constellation*" (Habermas, 2000, p. 47) of democratic institutions and transnational public spaces in which the state becomes a player among others, charged with the *"piloting of public action"* (Duran, 2009, p. 329)[36].

One of the main debates resulting from the developments described above is most certainly that about the progressive development of employment law towards common employment law (Maggi-Germain, 2010 ; 2019) that is a prescriptive corpus applicable to a group of workers (salaried employees, civil servants and self-employed workers), thus recreating a link with the ideal of universal law carried by the *jus commune* of the editors of the Civil Code. Based on what the eminent legal scholar Paul Durand (1952, p. 439) identified as the *"different forms of human work"*, the principles common to all workers with distinct legal statuses can be stated - as was the case for salaried employees in the recodification movement since 1989 (Maggi-Germain, 2019)[37] - in new "activity codes" (e.g. the Energy Code and the Transport Code)

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[33] *"Freedom consists of being able to do anything that does not harm someone else: thus the exercise of natural rights by each individual is only subject to limits that ensure that other members of society can enjoy those same rights. These limits can only be determined by the law"* Article 4 of the Declaration of the Rights of Man and the Citizen of 1789.

[34] The Council of State dedicated one of its annual reports to this, noting a *"growing trend towards a "socialization of risk" generated by the development of our society towards an increased desire for security and an increased demand for risks to be covered"* (Council of State, 2005, p.9).

[35] Businesses are required, for example, to maintain the professional capacity of their salaried employees (Maggi-Germain, 2009).

[36] State intervention can thus take multiple forms, such as the creation of independent administrative authorities concomitant with the privatization of industrial and commercial public services.

[37] Book 1 of the Energy Code contains a Title 6, which brings together the provisions concerning staff of electricity and gas utility companies (Articles L. L161-1 to 6) while a Book of the Transport Code is dedicated to the social regulations that apply to transport (Articles L1311-1

whose "perimeter"[38] - will be defined by the economic activity itself. What logic or rationality will back up this common employment law? Can the extent of social rights be shaped by this economic activity? Will it always be a case of protecting the weakest party, in compliance with an ideal of justice that "*wants to ensure, above all, that the powerful do not oppress the weak"* (Capitant, 1922, p. 33), or rather one of circumscribing, under cover of an extension of their scope, the social rights that have so far been brought together in a "base", in exchange for a redistribution of liabilities? In other words, is it possible to extend the scope of common employment law to all workers or even to all "persons"[39], without questioning the historical functions of employment law or changing its very nature?

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to L1331-3).

[38] The term "perimeter" is gradually replacing "scope" in employment law in particular. This semantic shift is far from anodyne: it is one of the signs of the move from institutionalized law, characterized by its hierarchy of sources, to horizontal law determined by the subsidiarity of its sources.

[39] The scope of the Labor Code extends, in some of its provisions derived from recent laws, to "all persons": holders of personal activity accounts (Article L5151-2) and beneficiaries of career development advice (Article L6111-6). cf. N. Maggi-Germain (2016), "Rights attached to individuals, a new category of social rights? The example of the personal activity account" in L. Mella Méndez and L. Serrani, *Los actuales cambios sociales y laborales: nuevos retos para el mundo del trabajo*. Libro 1: Cambios tecnológicos y nuevos retos para el mundo del trabajo (Portugal, Spain, Colombia, Italy, France), ed. Peter Lang, 463 p., p. 419-432 available at https://www.peterlang.com/view/product/80122?rskey=6mz9BG&result=5 ; and also "The personal activity account: Requiem for a dream ?", *Droit social* June 2016, p. 541-543

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